

Docket No. 17-60062

**United States Court Of Appeals
For The Ninth Circuit**

ALLANA BARONI

Plaintiff, Appellant, and Cross-Appellee,

vs.

WELLS FARGO BANK, N.A., AS TRUSTEE, ETC.

Defendant, Appellee, and Cross-Appellant.

*Appeal from Bankruptcy Appellate Panel for the Ninth Circuit,
Case Nos. CC 16-1345, CC 16-1383*

**MOTION TO DISMISS CROSS-
APPEAL**

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Attorneys for Wells Fargo Bank, N.A. As Trustee For Structured Adjustable Rate
Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2005-17

Wells Fargo Bank, N.A. As Trustee For Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2005-17 (“Wells Fargo”) hereby moves this dismiss this Cross-Appeal as moot on the following grounds.

This Cross-Appeal was filed by Wells Fargo on October 28, 2016 and arises out of a fee award issued in favor of Wells Fargo and against Debtor. The sole issue on appeal is whether the bankruptcy court erred in determining that the attorney fees it awarded arose pre-petition or pre-confirmation and was subject to treatment and discharge under Allana Baroni’s (“Debtor”) Chapter 11 plan. At this time, the appeal is fully briefed and oral argument is scheduled for October 23, 2019.

On April 29, 2019, the bankruptcy court entered an order converting the case of Debtor to one under Chapter 7. *In re Baroni*, Case No. 12-10986 (Bankr. C.D. Cal, Dkt. # 967. David Seror, Chapter 7 Trustee (“Trustee”) was appointed as representative of Debtor’s Bankruptcy Estate. On July 31, 2019, the bankruptcy court denied a motion to reconsider the order converting the case. *In re Baroni*, Case No. 12-10986 (Bankr. C.D. Cal), Dkt. # 1022.¹

¹ Debtor has appealed this order and the appeal is currently pending in the Central District of California as case number 2:19-cv-07548-DSF. Wells Fargo seeks dismissal despite the possibility that the order converting the case could be reversed on appeal.

The conversion of the case renders this appeal moot. Whether the fee award arose pre or post-confirmation of Debtor's Chapter 11 plan is no longer relevant as to whether the fee award is subject to discharge as all pre-conversion claims are not treated as if they arose "immediately before the date of the filing of the petition." 11 U.S.C. 348(d). Therefore, the appeal is moot as resolution of it will not provide any party relief.

On September 5, 2019, counsel for Wells Fargo emailed counsel for Trustee and Debtor as to their position on dismissal of the appeal. Trustee states he has no opposition to this motion. Debtor has failed to provide a position as to the motion. Accordingly, Wells Fargo requests that the Court dismiss the action, with each side to bear their own fees and costs.

DATED: October 10, 2019

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By: /s/ Bernard J. Kornberg
 Bernard J. Kornberg

Attorneys for Wells Fargo Bank, N.A. As
Trustee For Structured Adjustable Rate
Mortgage Loan Trust Mortgage Pass-Through
Certificates, Series 2005-17

9th Circuit Case
Number(s)

17-60062

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on October 10, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Signature

/s/ Bernard J. Kornberg